

AMENDED IN ASSEMBLY JUNE 20, 2005

AMENDED IN SENATE MAY 4, 2005

AMENDED IN SENATE APRIL 11, 2005

SENATE BILL

No. 879

Introduced by Senator Escutia

(Coauthors: Senators Kuehl, Ortiz, Simitian, and Vincent)

(Coauthors: Assembly Members Goldberg, Jones, Koretz, Lieber, and Saldana)

February 22, 2005

An act to amend Sections 12996.5 and 12999.5 of the Food and Agricultural Code, relating to pest control.

LEGISLATIVE COUNSEL'S DIGEST

SB 879, as amended, Escutia. Pest control: violations.

Existing law generally regulates pest control and provides that the Attorney General may bring an action for civil penalties against any person who violates these provisions, as specified, or any regulation issued pursuant to them, however, in lieu of civil prosecution, the Director of Pesticide Regulation may levy a civil penalty of not more than \$1,000, or \$5,000, for each violation as specified. The county agricultural commissioner or the director may bring an action to enjoin the violation or the threatened violation of any order made pursuant to these provisions.

This bill would require that initiation and completion of human illness investigations in connection with these provisions take no longer than 60 days. This bill would require that civil penalties be levied for any violation that creates an actual health or environmental hazard, or poses a reasonable possibility of creating, an actual health or environmental effect, or for a failure to comply with provisions

specifying requirements for protecting people, animals, and property, as specified. This bill would provide that violation of a cease and desist order, as specified, shall constitute a serious and separate offense per aggrieved individual. This bill would define aggrieved individual for the purpose of these provisions, and would provide an aggrieved individual the right to be notified of a proposed action before a civil penalty is levied, to request a hearing, and to appeal the decision.

Because this bill would increase the duties of local officials, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12996.5 of the Food and Agricultural
2 Code is amended to read:
3 12996.5. (a) For the purposes of this chapter:
4 (1) “Office” means the Office of Environmental Health
5 Hazard Assessment.
6 (2) “Department” means the Department of Pesticide
7 Regulation.
8 (3) “Certified Unified Program Agency” or “CUPA” means
9 the agency certified by the Secretary for Environmental
10 Protection to implement the unified program specified in Chapter
11 6.11 (commencing with Section 25404) of Division 20 of the
12 Health and Safety Code within a jurisdiction.
13 (4) “Agency” means the California Environmental Protection
14 Agency.
15 (5) “Nonoccupational” means that the person exposed to the
16 pesticide was not at the time of the exposure performing work as
17 an employee.

1 (6) “Acute” means a medical condition that involves a sudden
2 onset of symptoms due to an illness, injury, or other medical
3 problem that requires prompt medical attention and that has a
4 limited duration.

5 (7) “Uncompensated medical care” means the cost of care not
6 covered by any other program, including, but not limited to
7 copayments for medical insurance, Healthy Families Program, or
8 Medi-Cal. Reimbursed medical costs shall not exceed 125
9 percent of the Medi-Cal reimbursement rates.

10 (8) “Aggrieved individual” means an individual whose health
11 or property has been harmed as a result of alleged violations of
12 Division 6 (commencing with Section 11401) or Division 7
13 (commencing with Section 12500) related to pesticides~~and~~ or
14 any regulation adopted pursuant to those divisions that are the
15 subject of a specific county or state pesticide episode
16 investigation.

17 (9) “Health or environmental effect” means any damage,
18 either permanent or temporary, to a person’s health or to public
19 or private property, or creation of deleterious effects to air or
20 water quality. Nothing in this paragraph shall lessen the
21 protections afforded by any statute or regulation protecting the
22 state’s environment.

23 (10) “Hazard” means a source of danger.

24 (b) The exposure of each person to a pesticide resulting from
25 the violation of Section 12972 or 12973, or any regulation
26 adopted pursuant to Section 12976, 12981, or 14005, that causes
27 acute illnesses or injury, shall constitute a separate violation of
28 the statute or regulation.

29 SEC. 2. Section 12999.5 of the Food and Agricultural Code is
30 amended to read:

31 12999.5. (a) Initiation and completion of human illness
32 investigations by the director or commissioner shall take no
33 longer than 60 days unless *a written* explanation of the
34 *reasonable* need for greater time is provided to the director.
35 Following initial notification or knowledge of an episode, the
36 commissioner must initiate priority episode investigations
37 immediately, if at all possible, and within 72 hours in all cases
38 and submit a preliminary update to the director and any known
39 aggrieved individual within 15 days.

(b) In lieu of civil prosecution by the director, the commissioner may levy a civil penalty against a person violating Division 6 (commencing with Section 11401), Article 10 (commencing with Section 12971) or Article 10.5 (commencing with Section 12980) of this chapter, Section 12995, Article 1 (commencing with Section 14001) of Chapter 3, Chapter 7.5 (commencing with Section 15300), or a regulation adopted pursuant to any of these provisions, of not more than one thousand dollars (\$1,000) for each violation.

(c) Civil penalties shall be levied for any violation that creates an actual health or environmental hazard or poses a reasonable possibility of creating a health or environmental effect, pursuant to Section 6130 of Title 3 of the California Code of Regulations subject to subdivision (b) of Section 12999.5. Actual health hazards include, but are not limited to, failure to comply with codes and regulations that specify requirements for protecting people, animals, and property from pesticide contamination, providing and maintaining decontamination facilities and supplies, protective equipment, training, and hazard communication for pesticide handlers and fieldworkers .

(d) The exposure of each individual to an actual health or environmental hazard or reasonable possibility of causing a health or environmental effect, pursuant to Section 6130 of Title 3 of the California Code of Regulations shall constitute a separate violation of the section or regulation. Any violation determined by the commissioner to be a serious violation as defined in Section 6130 of Title 3 of the California Code of Regulations is subject to a fine of not more than five thousand dollars (\$5,000) for each violation. Violation of a cease and desist order issued under authority of Sections 13101 and 13102 of the Food and Agricultural Code shall constitute a serious and separate offense per aggrieved individual. It is unlawful and grounds for denial of a permit under Section 14008 for any person to refuse or neglect to pay a civil penalty levied pursuant to this section once the order is final.

(e) If a person has received a civil penalty for pesticide drift in a school area subject to Section 11503.5 that results in a serious violation as defined in subdivision (b), the commissioner shall charge a fee, not to exceed fifty dollars (\$50), for processing and monitoring each subsequent pesticide application that may pose a

1 risk of pesticide drift made in a school area subject to Section
2 11503.5. The Agricultural Commissioner shall continue to
3 impose the fee for each subsequent application that may pose a
4 risk of drift, until the person has completed 24 months without
5 another serious violation as defined in subdivision (b).

6 (f) Before a civil penalty is levied, any aggrieved individual
7 and the person charged with the violation shall be given a written
8 notice of the proposed action including the nature of the violation
9 and the amount of the proposed penalty, and shall have the right
10 to request a hearing within 20 days after receiving notice of the
11 proposed action. A notice of the proposed action that is sent by
12 certified mail to the last known address of the person charged
13 shall be considered received even if delivery is refused or the
14 notice is not accepted at that address. If a hearing is requested,
15 notice of the time and place of the hearing shall be given at least
16 10 days before the date set for the hearing. At the hearing, the
17 aggrieved individual and the person shall be given an opportunity
18 to review the commissioner's evidence and to present evidence
19 on his or her own behalf. If a hearing is not timely requested, the
20 commissioner may take the action proposed without a hearing.

21 (g) ~~If the~~ *Any aggrieved individual has the right to appeal to*
22 *the director if a notice of proposed action has not been issued in*
23 *accordance with this section. In addition, if an aggrieved*
24 *individual or person upon whom the commissioner levied a civil*
25 *penalty requested and appeared at a hearing, the aggrieved*
26 *individual or person may appeal the commissioner's decision to*
27 *the director within 30 days of the date of receiving a copy of the*
28 *commissioner's decision. The following procedures apply to the*
29 *an appeal:*

30 (1) The appeal shall be in writing and signed by the appellant
31 or his or her authorized agent, state the grounds for the appeal,
32 and include a copy of the commissioner's decision. The appellant
33 shall file a copy of the appeal with the commissioner at the same
34 time it is filed with the director.

35 (2) The appellant and the commissioner may, at the time of
36 filing the appeal or within 10 days thereafter or at a later time
37 prescribed by the director, present the record of the hearing
38 including written evidence that was submitted at the hearing and
39 a written argument to the director stating grounds for affirming,
40 modifying, or reversing the commissioner's decision.

1 (3) The director may grant oral arguments upon application
2 made at the time written arguments are filed.

3 (4) If an application to present an oral argument is granted,
4 written notice of the time and place for the oral argument shall be
5 given at least 10 days before the date set therefor. The times may
6 be altered by mutual agreement of the appellant, the
7 commissioner, and the director.

8 (5) The director shall decide the appeal on the record of the
9 hearing, including the written evidence and the written argument
10 described in paragraph (2), that he or she has received. If the
11 director finds substantial evidence in the record to support the
12 commissioner's decision, the director shall affirm the decision.

13 (6) The director shall render a written decision within 45 days
14 of the date of appeal or within 15 days of the date of oral
15 arguments or as soon thereafter as practical.

16 (7) On an appeal pursuant to this section, the director may
17 affirm the commissioner's decision, modify the commissioner's
18 decision by reducing or increasing the amount of the penalty
19 levied so that it is within the director's guidelines for imposing
20 civil penalties, or reverse the commissioner's decision. A copy of
21 the director's decision shall be delivered or mailed to the
22 appellant and the commissioner.

23 (8) Any aggrieved individual or person who does not request a
24 hearing pursuant to subdivision (d) may not file an appeal
25 pursuant to this subdivision.

26 (9) Review of a decision of the director may be sought by the
27 appellant within 30 days of the date of the decision pursuant to
28 Section 1094.5 of the Code of Civil Procedure.

29 (h) The commissioner may levy a civil penalty pursuant to
30 subdivisions (b), (d), and (e) against a person violating paragraph
31 (1), (2), or (8) of subdivision (a) of Section 1695 of the Labor
32 Code, which pertains to registration with the commissioner,
33 carrying proof of that registration, and filing changes of address
34 with the commissioner.

35 (i) After the exhaustion of the appeal and review procedures
36 provided in this section, the commissioner or his or her
37 representative may file a certified copy of a final decision of the
38 commissioner that directs the payment of a civil penalty and, if
39 applicable, a copy of any decision of the director or his or her
40 authorized representative rendered on an appeal from the

1 commissioner's decision and a copy of any order that denies a
2 petition for a writ of administrative mandamus, with the clerk of
3 the superior court of any county. Judgment shall be entered
4 immediately by the clerk in conformity with the decision or
5 order. No fees shall be charged by the clerk of the superior court
6 for the performance of any official service required in connection
7 with the entry of judgment pursuant to this section.

8 ~~SEC. 4.—~~

9 *SEC. 3.* If the Commission on State Mandates determines that
10 this act contains costs mandated by the state, reimbursement to
11 local agencies and school districts for those costs shall be made
12 pursuant to Part 7 (commencing with Section 17500) of Division
13 4 of Title 2 of the Government Code.